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7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 In the Matter of:

9 SUPREME COURT

10 Case No.: R-08-0013

11 PETITION TO AMEND RULE 38(d) OF
12 THE RULES OF THE SUPREME COURT
13 OF ARIZONA PERTAINING TO SPECIAL
14 EXCEPTIONS TO STANDARD
15 EXAMINATION AND ADMISSION
16 PROCESS TO INCORPORATE RECENT
17 LAW GRADUATES INTO THIS
18 EXCEPTION

19 COMMENT TO PETITION TO AMEND
20 RULE 38(d)

21 The Arizona Prosecuting Attorneys' Advisory Council, APAAC, supports the pending
22 petition, No. R-08-0013, to amend Rule 38(d) of the Rules of the Supreme Court to allow recent
23 law school graduates who are studying for their Bar Examinations, or who have taken the Bar
24 Examination and are awaiting the results, to practice and appear "on behalf of the state or any
25 political subdivision thereof" under the supervision of experienced attorneys. However, APAAC
26 suggests that the amendments to Rule 38(d) be worded more simply and clearly, as set forth in
the attached proposal.

APAAC also requests that Rule 38(d) be amended to allow Arizona prosecuting agencies
to conduct legal internship programs, to certify law students and recent law school graduates to
limited practice under supervision by experienced attorneys, and to allow such an agency to file
the certification forms required by Rule 38(d)(5)(A). APAAC respectfully submits this
Memorandum in support of the petition.

MEMORANDUM IN SUPPORT OF THE PETITION

1. Current Rule 38(d), Rules of the Supreme Court

As amended effective January 1, 2009, Rule 38(d)(3)(B), Rules of the Supreme Court, allows a second- or third-year law student who is supervised by a licensed attorney to “appear in any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the prosecuting attorney or that attorney’s authorized representative,” if, and only if, such a student meets all of the requirements of Rule 38(d)(5). First, under Rule 38(d)(5)(A), the student must be currently enrolled in an American Bar Association accredited/approved law school, and the law school dean must certify that the student is in compliance with Rules 38(d)(5)(B), 38(d)(5)(C), and 38(d)(7). Rule 38(d)(5)(B) requires the law school dean to certify that the student has completed at least three semesters of law school. Rule 38(d)(5)(C) requires the law school dean to certify that the student is “of good character and competent legal ability” and “adequately trained to perform as a legal intern,” having received “instruction in civil, criminal, and courtroom procedure.” Finally, Rule 38(d)(7) requires the law school dean to file the certification with the clerk of the Arizona Supreme Court.

Among the stated purposes of this rule are to provide assistance to practicing attorneys and to encourage clinical instruction in trial work. However, law school graduates who have recently completed their legal education are not allowed to appear in court under this provision. In addition, law school deans now certify law students under Rule 38(d) only while those students are enrolled in a law school’s clinical legal practice program. However, the law schools have very limited resources for their clinical programs. Because many more students apply for clinic positions than can be accommodated, the law schools conduct drawings to determine which students to admit. Thus, many competent and fully qualified law students who want to take part in court proceedings under Rule 38(d) are excluded from doing so.

2. Summary of Proposed Changes

1 The pending petition, No. R-08-0013, proposes amending Rule 38(d) to allow recent law
2 school graduates who are studying for the Arizona Bar Examination, or who have taken the Bar
3 Examination and are awaiting the results, to appear in court under the supervision of a licensed
4 attorney. The language of the proposed rule change would add the words “or an eligible bar
5 applicant” or similar language in numerous places in the text of Rule 38(d), and would add a
6 subparagraph (d)(8) to the rule dealing specifically with the subject of bar applicants. The
7 petition does not suggest any changes to the requirement that a Rule 38(d) student be enrolled in
8 a law school clinical practice program or to the requirement that only a law school dean may
9 certify students to practice under the rule.
10

11 **3. APAAC’s Suggested Changes**

12 Attached are APAAC’s suggested changes to Rule 38(d). In particular, the proposed
13 wording would amend Rule 38(d)(3)(A) by adding the following underlined language defining
14 “eligible law student.” Additions are indicated by underlined text, and deletions are indicated by
15 strikeouts:
16

17 *3. Activities of Eligible Law Students.*

18 A. As used in this Rule, “eligible law student” means a person who is currently
19 enrolled in a juris doctorate program that is either provisionally or fully approved
20 by the American Bar Association, or a person who has received such a juris
21 doctorate degree within the previous twelve months and has either applied to take
22 the Arizona Bar Examination, has taken that Examination and is awaiting the
results, or has taken and passed that Examination but has not yet been admitted to
the Arizona State Bar. ~~A~~ An eligible law student meeting the requirements of
paragraph (d)(5) may appear in any court

23 Amending the definition of “eligible law student” in this manner avoids having to amend Rule
24 38(d) every time the rule mentions law students.

25 APAAC also suggests amending Rule 38(d)(3)(G) by allowing prosecuting agencies to
26 conduct legal internship programs and to certify eligible law students under Rule 38, allowing

1 them to conduct limited, supervised legal practice under those programs. The proposed
2 amendments would read as follows:

3 G. Except for students participating under the requirements of paragraph (d)(6)
4 below, all activities under this rule must be part of the a law school's educational
5 and clinical law practice program approved by the dean and faculty of a law
6 school either provisionally or fully approved and accredited by the American Bar
7 Association, or must be part of a legal internship program conducted by the state
8 or any political subdivision thereof. In the case of a law school program, A a
9 written statement of the contents of the school's educational and clinical law
10 practice program of the law school's juris doctorate program either provisionally
11 or fully approved and accredited by the American Bar Association shall be filed
12 with the executive director of the state bar not later than thirty days prior to the
13 commencement of the program. In the case of a legal internship program
14 conducted by the state or any political subdivision thereof, the governmental
15 agency involved shall file a written statement of the scope of the internship
16 program, the education and training to be provided to the legal interns with the
17 executive director of the State Bar not later than thirty days prior to the
18 commencement of the program.

19 Finally, APAAC suggests amending Rule 38(d)(5)(A) to allow recent law school
20 graduates to conduct limited, supervised practice under Rule 38(d), and also to allow the heads
21 of state legal agencies, or their designees, to conduct legal internship programs and certify
22 eligible law students under Rule 38. The proposed changes would read as follows:

23 5. *Requirements and Limitations for Eligible Law Students.* Except for students
24 making an appearance pursuant to paragraph (d)(3)(F), in order to make an
25 appearance pursuant to this rule, the eligible law student must:

26 A. be duly enrolled in a law school's juris doctorate program either
provisionally or fully approved and accredited by the American
Bar Association, or have received such a juris doctorate degree
within the previous twelve months and have either applied to take
the Arizona Bar Examination, have taken that Examination and be
awaiting the results, or have taken and passed that Examination but
have not yet been admitted to the Arizona State Bar; and be
supervised by a member of the State Bar of Arizona, and be
certified by the deans of the law school, or by the head of a state
agency or any political subdivision thereof, or his or her designee,
on a form approved by the clerk of this Court showing compliance
with Rules 38(d)(3)(F), 38(d)(5)(B) and (C), and 38(d)(7); ...

1 Finally, some additional conforming changes would also be necessary; these are set out in full in
2 the attached proposed wording.

3 **4. Arguments in Support of the Proposed Changes in the Petition**

4 APAAC supports the petition's proposed changes to Rule 38(d). Rule 38(d)(B) now
5 allows supervised second-year and third-year law students the opportunity to appear in court "in
6 any criminal matter on behalf of the state or any political subdivision thereof," but does not
7 allow those same persons to do so once they have graduated from law school. Law school
8 graduates who are studying for the Bar Examination, or who have taken the Bar Examination and
9 are awaiting the results, would reasonably be expected to be more prepared and competent than
10 second-year law students, not less capable. In short, there is no logic in granting this privilege to
11 law students, but then taking this privilege away when the students receive their law degrees.
12 Thus, APAAC agrees with the petition that law students who have already qualified to practice
13 under Rule 38 should be able to continue to do so even after they have graduated from law
14 school.
15
16

17 **5. Arguments in Support of APAAC's Proposed Changes**

18 Allowing prosecuting agencies to conduct legal internship programs and certify law
19 students and recent graduates to perform limited, supervised practice under Rule 38 would
20 provide benefits both for the agencies and for the law students and graduates involved. As this
21 Court is aware, in the current economic crisis, public funds of all kinds are stretched thin and
22 jobs are in short supply. Prosecuting agencies often take on both law students and recent law
23 school graduates to serve as legal interns – sometimes for pay, sometimes for school credit, and
24 sometimes just for the experience.
25
26

1 Legal internship programs are beneficial for all concerned. Such programs give the legal
2 interns real-world education and experience in dealing with actual legal matters under the
3 deadlines and constraints of an actual working law office. For these interns, the chance to appear
4 in court provides invaluable experience and is a powerful incentive to undertake an internship in
5 a prosecuting agency.

6
7 Internships also help the prosecuting agencies. As public agencies, prosecuting offices
8 cannot offer salaries commensurate with those in the private sector. Offering legal interns the
9 opportunity to appear in court is a way to encourage them to consider careers in public service.
10 In addition, internships give the agencies and the interns an opportunity to see if they are “right
11 for each other” – that is, the agencies see if the interns would make good additions to their firms,
12 and the interns have an opportunity to see if they would enjoy working for the agencies. Finally,
13 allowing legal interns to deal with relatively routine legal matters allows better use of public
14 resources by freeing attorneys in the agency to deal with other matters.

15
16 APAAC proposes allowing prosecuting agencies to certify students for several reasons.
17 First, as noted above, law school clinical programs have very limited availability – many more
18 students apply for such programs than can be admitted, and chance rather than ability determines
19 which students gain entry to the programs. Allowing prosecuting agencies to conduct legal
20 internship programs and certify interns under Rule 38 would expand the opportunity for law
21 students to gain valuable legal experience even before being admitted to the Arizona State Bar.
22 At the same time, the continued requirements for legal education and for experienced attorney
23 supervision protect the integrity of the legal system. APAAC believes that allowing only
24 students enrolled in clinical law programs to practice under Rule 38 is unnecessary and shuts out
25 many qualified students who could benefit from such experience.
26

1 Further, requiring law school deans to certify law students under Rule 38 is of
2 questionable relevance. In practice, law school deans have little day-to-day contact with
3 students. To make their certification decisions, they will need to rely on recommendations from
4 teachers, employers, and the like. A prosecuting agency can conduct interviews and perform any
5 necessary background checks to determine whether a proposed intern is sufficiently well
6 educated and of good moral character. Law school deans have no superior ability to make such
7 determinations. Granting law school deans a monopoly on Rule 38 certification is unnecessary
8 and ill-advised.

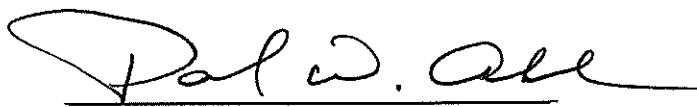
10 Furthermore, the educational purposes of Rule 38 are served by requiring the prosecuting
11 agency to have a program of education and training for the interns and to provide the State Bar
12 with a written description of that program. The State Bar will be able to review that program and
13 recommend any necessary changes.

15 APAAC respectfully asks this Court to adopt its proposed changes which are attached to
16 this Comment.

17 **6. Conclusion**

18 For all the reasons set forth in this Memorandum, APAAC asks this Court to grant
19 Petition No. R-08-0013, but to adopt APAAC's proposed language instead of the language
20 proposed in the petition.

22 Respectfully submitted this 19th of May, 2009.

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26 Executive Director
Arizona Prosecuting Attorneys' Advisory Council

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5 Copies of the foregoing have
6 been electronically filed
7 this 19th day of May, 2009 with:

8 Arizona Supreme Court

9 Copies of the foregoing have been mailed
10 This 19th day of May, 2009 to:

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